

Message Text

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ACTION IO-06

INFO OCT-01 SS-14 ISO-00 CIAE-00 DODE-00 NSAE-00 NSC-05
INR-05 PA-01 PM-03 SP-02 ICA-01 L-01 EUR-08
TRSE-00 EA-06 /053 W
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R 071954Z APR 78
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 0529
INFO AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 01293

LIMDIS

E.O. 11652: GDS
TAGS: US, VN
SUBJECT: THI CASE

REF: USUN 1224

1. AS REPORTED REFTTEL, THE VIETNAMESE MISSION REJECTED A SET OF HOST COUNTRY RELATIONS COMMITTEE "CONCLUSIONS" DRAFTED BY AMBASSADOR ROSSIDES ON QUESTIONS RAISED BY THI CASE. WE HAVE RECEIVED TEXT OF ROSSIDES "CONCLUSIONS" THROUGH HELPFUL SECRETARIAT SOURCE AND REPRODUCE IT AT END THIS MESSAGE. SINCE VIETNAMESE APPEAR TO HAVE TERMINATED THE CONSULTATIONS PROCESS AND SINCE WE HAVE THE TEXT ON AN INFORMAL BASIS, IT WOULD BE INAPPROPRIATE TO COMMENT TO AMBASSADOR ROSSIDES.

2. ROSSIDES TEXT WOULD HAVE DESCRIBED THE CONSULTATIONS REQUIRED OF A HOST COUNTRY SEEKING THE DEPARTURE OF A DIPLOMAT FOR ABUSE OF PRIVILEGES OF RESIDENCE AS "A PROCESS DURING WHICH THE PARTIES EXCHANGE VIEWS ON, AND DISCUSS THE SUBJECT MATTER. WHILE CONSULTATION DOES NOT REQUIRE AGREEMENT BETWEEN THE PARTIES, THEIR
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DISCUSSION MUST GO TO THE SUBSTANCE OF THE QUESTION IN ISSUE... IT ALSO IS ESSENTIAL THAT BOTH SIDES CONDUCT THE CONSULTATIONS IN GOOD FAITH WITH A VIEW TO CLARIFYING ANY MISUNDERSTANDING." THE TEXT THUS IDENTIFIES GOOD FAITH IMPLEMENTATION OF THE CONSULTATION REQUIREMENT OF THE HEADQUARTERS AGREEMENT AS OCCUPYING A MID-POINT ON A CONTINUUM WHOSE

OPPOSITE ENDS ARE MERE NOTIFICATION, ON THE ONE HAND,
AND AGREEMENT ON THE OTHER.

3. THE ROSSIDES TEXT'S MORE CONTROVERSIAL POINT,
CONCERNING THE UNDESIRABILITY OF PUBLICITY, IS
CONTAINED IN THE FINAL SENTENCE, WHICH READS: "UNTIL
THE CONSULTATIONS HAVE BEEN COMPLETED NO PUBLIC
STATEMENTS, THROUGH THE INFORMATION MEDIA OR OTHERWISE,
SHOULD BE MADE, AS PREJUDICIAL PUBLICITY WOULD TEND
TO PREEMPT THE CONSULTATION PROCEDURE."

4. WHILE THE TEXT NOWHERE MAKES ANY MENTION WHATEVER
OF THE THI CASE, THIS CONCLUDING STATEMENT ECHOES A
CRITICISM OF US CONDUCT FREQUENTLY VOICED EVEN BY
SUCH CLOSE HOST COUNTRY RELATIONS COMMITTEE FRIENDS
AS THE UK, CANADA, SPAIN AND COSTA RICA, THAT
AMBASSADOR THI SHOULD HAVE LEARNED FROM THE USG,
NOT THE PRESS AND TELEVISION, OF HIS BEING NAMED AS
AN UNINDICTED CO-CONSPIRATOR BY THE ALEXANDRIA
GRAND JURY. IF WE HAD TO RE-RUN USUN ACTIONS IN THE
THI MATTER, ONE CHANGE WE WOULD WANT TO MAKE WOULD BE
TO HAVE BEEN INSTRUCTED TO INFORM THI AND CONSULT
WITH HIM AT THE LATEST SOME HOURS BEFORE THE GRAND
JURY RETURNED THE INDICTMENT IN WHICH HIS NAME AROSE,
RATHER THAN THE DAY AFTER THE GRAND JURY ACTION.
WHILE NOT INSENSITIVE TO THE COMPLEXITIES AND
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UNIQUE CHARACTER OF THE THI CASE, USUN HOPES THAT,
IN ANY FUTURE INSTANCE OF A REQUEST FOR DEPARTURE FOR
ABUSE OF PRIVILEGES OF RESIDENCE, WE WILL BE
INSTRUCTED AT THE EARLIEST POSSIBLE TIME AND BEFORE
THE MATTER BECOMES PUBLIC TO INFORM AND CONSULT WITH
THE CHIEF OF THE FOREIGN MISSION INVOLVED.

5. FULL TEXT OF ROSSIDES DRAFT READS AS FOLLOWS:
THE COMMITTEE HAS CONSIDERED THE PROVISIONS
OF SECTION 13(B) OF THE HEADQUARTERS AGREEMENT, AND
HAS EXAMINED, IN PARTICULAR, THE PROCEDURE UNDER WHICH
THE UNITED STATES GOVERNMENT MAY EXERCISE ITS
RIGHT TO REQUIRE THE DEPARTURE OF A REPRESENTATIVE
OF A MEMBER STATE ON THE GROUND OF ABUSE OF THE
PRIVILEGE OF RESIDENCE.

THE COMMITTEE IS OF THE VIEW THAT THE
LEGAL SAFEGUARDS PROVIDED UNDER THE HEADQUARTERS
AGREEMENT HAVE AS THEIR PURPOSE TO ENSURE THE
INDEPENDENT EXERCISE BY REPRESENTATIVES OF MEMBER
STATES OF THEIR FUNCTIONS IN CONNEXION WITH THE
ORGANIZATION, IN ACCORDANCE WITH ARTICLE 105, SECTION 2,

OF THE UNITED NATIONS CHARTER. IN THIS CONNEXION
THE COMMITTEE WISHES TO EMPHASIZE THAT REPRESENTATIVES
OF MEMBER STATES ARE ACCREDITED EXCLUSIVELY TO THE
UNITED NATIONS AND NOT TO THE GOVERNMENT OF THE HOST
COUNTRY.

THE COMMITTEE FINDS THAT TO SAFEGUARD THESE
PRINCIPLES, ALSO IN EXCEPTIONAL CASES WHERE THE
HOST COUNTRY MAY REQUIRE THE DEPARTURE OF A
REPRESENTATIVE, THE HEADQUARTERS AGREEMENT PROVIDES

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C O N F I D E N T I A L SECTION 02 OF 02 USUN NEW YORK 01293

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FOR A PROCEDURE DISTINCT FROM THE LONG ESTABLISHED
RULES REGARDING DECLARATIONS OF PERSONA NON GRATA,
USED IN BI-LATERAL DIPLOMATIC RELATIONS, AND THE
RELATED OBLIGATION OF THE SENDING STATE TO RECALL.
SECTION 13(B) OF THE HEADQUARTERS AGREEMENT REQUIRES
AS A PRE-REQUISITE BEFORE THE HOST COUNTRY MAY TAKE
ANY DECISION, OR INSTITUTE ANY PROCEEDING, TO REQUIRE
THE DEPARTURE OF A REPRESENTATIVE OF A MEMBER STATE,
THAT SUBSTANTIVE CONSULTATIONS MUST TAKE PLACE BETWEEN
THE GOVERNMENT OF THE HOST COUNTRY AND THE GOVERNMENT
OF THE MEMBER STATE CONCERNED. FROM GENERAL
INTERNATIONAL PRACTICE, AS WELL AS THE PRACTICE OF
THE UNITED NATIONS, IT IS CLEAR THAT CONSULTATION IS
A PROCESS DURING WHICH THE PARTIES EXCHANGE VIEWS ON,
AND DISCUSS, THE SUBJECT MATTER. WHILE CONSULTATION
DOES NOT REQUIRE AGREEMENT BETWEEN THE PARTIES, THEIR
DISCUSSION MUST GO TO THE SUBSTANCE OF THE QUESTION
IN ISSUE. THE REQUIREMENT IN THE HEADQUARTERS

AGREEMENT OF PRIOR CONSULTATION IS TO BE UNDERSTOOD
IN THIS SENSE. IT ALSO IS ESSENTIAL THAT BOTH SIDES
CONDUCT THE CONSULTATIONS IN GOOD FAITH WITH A VIEW
TO CLARIFYING ANY MISUNDERSTANDING. UNTIL THE
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CONSULTATIONS HAVE BEEN COMPLETED NO PUBLIC STATEMENTS,
THROUGH THE INFORMATION MEDIA OR OTHERWISE, SHOULD BE
MADE, AS PREJUDICIAL PUBLICITY WOULD TEND TO PREEMPT
THE CONSULTATION PROCEDURE. LEONARD

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